

Testimony of Mark Reinstein, Mental Health Assn. in Mich., HB 4674
House Health Policy Committee, Sept. 22, 2015

Representative Callton and Members of the Committee –

I'm Mark Reinstein, representing the Mental Health Association in Michigan, the state's oldest advocacy organization for persons experiencing mental illness. I was a full-time employee of the Association for 32 years, including service at its CEO, until retiring this past January. So I was around for adoption of the initial Kevin's Law in 2004-05. I'm presently a consultant to the Association, and was a member of the administration's Kevin's Law panel convened to propose revisions to the law that are now in front of you.

The concept of Kevin's Law is to provide community services to persons with severe mental disorders who are adjudicated unlikely to participate voluntarily in treatment for their conditions. It won't solve all the problems of our mental health system, and it won't apply to most persons with mental illness. But for those with untreated severe disorders, it gives us another tool to try in helping them to attain recovery. And unlike other forms of court-ordered care, it doesn't require the person to be adjudicated an immediate threat to self or others before getting needed help to him or her.

In the past decade, Kevin's Law has been little utilized in Michigan. When my organization surveyed Probate Courts and Community Mental Health Programs last year, the number one reason given for non-usage was difficulty understanding and operationalizing the law. This was no surprise, given that the initial law had gaps, lack of clarity, no appropriation, and little follow-up training for communities.

Governor Snyder's Mental Health & Wellness Commission in 2014 called for removing barriers to the law's usage, and the Governor's Diversion Council then formed a special panel for revisions of the law that have led us to today.

It is very important to recognize that Kevin's Law already exists, and what's now in front of the committee is whether the law will be revised toward the possibility of more usage. If the committee took no action on Rep. Leonard's bill, Kevin's Law would still legally be in place in Michigan.

In my opinion, the five most significant revisions in the bill are as follow:

1. The current law has no timeframe for when a Kevin's Law hearing must be held. The new bill establishes applicable standards for that.
2. The current law probably establishes that a Kevin's Law subject must receive two clinical exams, at least one from a psychiatrist, before a court determination is made. Not everyone has agreed with that interpretation. The new bill makes clear that the two-exam requirement, with at least one from a psychiatrist, is in place.

3. The new bill removes one of the numerous Kevin's Law eligibility criteria – i.e., a person has to be currently non-compliant with recommended mental health treatment. That criterion was removed for two reasons: (a) it's often an impossible standard to determine one way or the other; and (b) this makes more practical the possibility of applying AOT as a community step-down for someone presently in a psychiatric hospital, as is being successfully done in several other states.

4. For all other forms of court-ordered care, the local prosecutor is to be involved with the case as the public's representative. At present, the prosecutor does not have to be involved in a Kevin's Law case, and this has caused problems in at least one county. The new bill inserts the same prosecutorial responsibility for Kevin's Law as for other court-ordered mental health treatments.

5. The new bill unifies and simplifies the processes of petitioning and certifying that someone may require court-ordered care, without diminishing rights protections.

And speaking of rights, I want to give some special attention to that issue.

Under the current law combined with the new bill, an AOT subject has the right to free, court-appointed counsel; a court hearing (that the subject may elect to attend); and a juried hearing if desired. Before a Kevin's Law order is issued, it must be shown that the subject meets eligibility criteria, and – as with other civil commitment cases – a psychiatrist and a physician or licensed psychologist must examine the individual and subsequently give testimony or written opinion to the court. Additionally, AOT subjects have rights not accorded to any other civil commitment cases under the state's Mental Health Code. All of the following must be considered before a final court order: the subject's medication experiences and preferences; any existing treatment plan for the subject; and any psychiatric advance directive (PAD) or durable power of attorney (DPOA) he or she previously established. Additionally, if no PAD or DPOA exists, the subject shall be offered assistance in developing one or both if desired. And, if there are conflicts between any of the afore-mentioned documents and the potential court order, a psychiatrist not previously involved with the case must be brought in for a review.

Assisted outpatient treatment (which is the other name for Kevin's Law) has proved a successful and cost-effective tool in other states based on several evaluations, some of which were independently conducted, including one by the Lansing-based Health Management Associates. Because most Kevin's Law subjects will be Medicaid-eligible, we can use this tool to a greater degree at a relative state General Fund cost that is very small. Meanwhile, we can save health care and corrections dollars and help some highly distressed individuals and their families if HB 4674 is enacted and the administration follows that up with an inexpensive training program for use of this tool.

Thank you for your thoughtful consideration.